

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA

RECEIVED

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ZAVIUS AVERETTO
Full name and prison number
of plaintiff(s)

v.
Lt. Willie Copeland
Nurse Adair
Nurse Parnell
Officer Latimore COI
et al.

Name of person(s) who violated
your constitutional rights.
(List the names of all the
persons.)

CIVIL ACTION NO. 2:06cv399-MHT
(To be supplied by the clerk
of U.S. District Court)

I. PREVIOUS LAWSUITS

- A. Have you begun other lawsuits in state or federal court dealing with the same or similar facts involved in this action? YES() NO(☒)
- B. Have you begun other lawsuits in state or federal court relating to your imprisonment? YES() NO(☒)
- C. If your answer to A or B is yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

1. Parties to this previous lawsuit:

Plaintiff(s) N/A

Defendant(s) N/A

2. Court (if federal court, name the district; if state court, name the county) N/A

3. Docket number N/A
4. Name of judge to whom case was assigned N/A
5. Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?) N/A
6. Approximate date of filing lawsuit N/A
7. Approximate date of disposition N/A

II. PLACE OF PRESENT CONFINEMENT Donaldson Correctional Facility, P.O. Box 100 Warrior Lane, Bessemer AL, 35022

PLACE OF INSTITUTION WHERE INCIDENT OCCURRED Station Correctional, P.O. Box 56, Elmore AL, 36025

III. NAME AND ADDRESS OF INDIVIDUAL(S) YOU ALLEGE VIOLATED YOUR CONSTITUTIONAL RIGHTS.

| | NAME | ADDRESS |
|----|-----------------------------|--|
| 1. | <u>Lt Willie Copeland</u> | <u>Station Correctional</u> <u>P.O. Box 56, Elmore, AL, 36025</u> |
| 2. | <u>Nurse Adair, PHS</u> | <u>Station Correctional</u> <u>P.O. Box 56, Elmore, AL, 36025</u> |
| 3. | <u>Nurse Parnell, PHS</u> | <u>Station Correctional</u> <u>P.O. Box 56, Elmore, AL, 36025</u> |
| 4. | <u>Officer Latimore COI</u> | <u>Station Correctional</u> <u>P.O. Box 56, Elmore, AL, 36025</u> |
| 5. | | |
| 6. | | |

IV. THE DATE UPON WHICH SAID VIOLATION OCCURRED August 15,
2004

V. STATE BRIEFLY THE GROUNDS ON WHICH YOU BASE YOUR ALLEGATION THAT YOUR CONSTITUTIONAL RIGHTS ARE BEING VIOLATED:

GROUND ONE: Eighth Amendment Violation to be free
from excessive force and negligence of proper medical attention

STATE BRIEFLY THE FACTS WHICH SUPPORT THIS GROUND. (State as best you can the time, place and manner and person involved.)

See Attachment

GROUND TWO: _____

SUPPORTING FACTS: _____

GROUND THREE: _____

SUPPORTING FACTS: _____

VI. STATE BRIEFLY EXACTLY WHAT YOU WANT THE COURT TO DO FOR YOU. MAKE NO LEGAL ARGUMENT. CITE NO CASES OR STATUTES.

50,000.00 (fifty thousand dollars punitive relief)

50,000.00 (fifty thousand dollars compensatory relief)
Any other relief the court deems feasible to redress plaintiff
for his pain and suffering at the hands of defendants.

Also see attach sheet

Zanis Auerate
Signature of plaintiff(s)

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on May 1, 2006
(Date)

Zanis Auerate
Signature of plaintiff(s)

ATTACHED SHEET...

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA

Zavius Averette,

Plaintiff,

VS.

CIVIL ACTION No. 2:06cv399-MHT
DEMAND A TRIAL BY
JURY

Lt. Willie Copeland, Officer Nobles
Officer Latimore, Warden Thomas,
Officer Nabb, Lt. Browning, Donal
Campbell Prison Commissioner,
Officer Kendrick, Officer Davis,
Cat. George Edwards, PHS NURSE
Adair, PHS NURSE Parnell, Dr.
Bivine and PHS NURSE Sharon
Richie,

Defendants.

PREMMINARY STATEMENT:

This is a civil action filed by Zavius Averette, a state prisoner, for damages and injunctive relief under 42U.S.C. §1983, alleging excessive physical force, infringement, provocation, assault and battery, deliberated indifference, Due process and neligence in violation of the Alabama 1901 Constitution and the United States Constitution.

JURISDICTION:

1. The court has jurisdiction over the plaintiff claims of violation of Federal Constitutional rights under 42 U.S.C. §1331 (a) and 1343.

2. The court has supplemental jurisdiction over the plaintiff state law tort claim under 28 U.S.C. §1367.

PARTIES:

3. The plaintiff, Zavius Antwan Averette, was incarcerated at STATON CORRECTIONAL FACILITY during the event described in this complaint.

4. Defendant Willie Copeland, is the Lt. AT Staton Correctional Facility. He is being sued in his official capacity and individual capacity.

5. Defendant Latimore, is an COI Officer at Staton Correctional Facility. He is being sued in his official capacity and individual capacity.

6. Defendant Adair is the PHS NURSE, at STATON Correctional Facility. She is being sued in her official capacity and individual capacity.

7. Defendant Parnell is the PHS NURSE at Staton Correctional Facility. She is being sued in her official capacity and individual capacity.

8. Defendant Thomas, is the warden at Staton Correctional Facility. He is being sued in his official capacity and individual capacity.

9. Defendant Donal Campbell, is the prison Commissioner for the Alabama Department of Correction. He is being sued in his official capacity and individual capacity.

10. Defendant Officer Nobles is an COI Officer at Station Correction Facility. He is being sued in his individual capacity and official capacity.

11. Defendant Brown is the Lt. AT station Correction Facility, He is being sued in his official capacity and individual capacity.

12. Defendant Kendrick is an officer at Station Correction Facility. He is an officer being sued in his official capacity and individual capacity.

13. Defendant Davis is an officer at Station Correction Facility. He is being sued in his official capacity and individual capacity.

14. Defendant Nabb , is an COI officer at Station Correction Facility. He is being sued in his official capacity and individual capacity.

15. Defendant Bivine is an Doctor at Station Correction Facility. He is being sued in his official capacity and individual capacity.

16. Defendant George Edwards is the Captain at Station Correction Facility. He is being sued in his official capacity and individual capacity.

17. Defendant Sharon Richie is an PHS NURSE AT station correction facility. She is being sued in her individual capacity and official capacity.

All the defendants have acted and continue to act, under color of State Law at all times relevant to this complaint.

FACTS:

On Sunday, August 15, 2004, around or about 11:00a.m., Lt. Willie Copeland seen Zavious Averette, in the old pacage room. So defendant Copeland said "what the fuck is you doing in here motherfucker?". Before I could explain to him that I was in there trying to scare Courtney. Defendant Copeland Pulled out his baton and grabed me by the shirt. Then he said "what are you doing trying to fuck on my time?". After that we walked to the shift office yet he still got me by the shirt with his baton out. When we made it to the shift office door, I saw officer Latimore sitting behind the door. The door was closed then defendant Copeland pushed me into the door two times before he opened it; afterward defendant Copeland open the door and grabbed me by my shirt again and forced me in the shift office. Defendant Latimore closed the door behind us. So while I was down on the floor with my back on the wall berween the desk and file cabinets, defendant copeland said I done gave you enough chances, and he said "I'm tired of your shit", then defendant Copeland said "I'm having problems this morning". After that statement defendant Copeland just started beating me with that baton as he was hitting me and hollowing "bitch I ought to kill you," "bitch I ought to bust your head"; defendant copeland said that several times. While defendant copeland was hollowing "he ought to bust my heah" defendant Latimore repeated two times to defendant copeland "don't hit him in the head".

While defendant Copeland was swinging his baton and hitting me with it on both of my arms, I was still trying to tell defendant copeland, what I was in the old package room waiting for but he just kept on hitting me. Defendant Copeland hit me in my right arm four times. Defendant bust my left elbow, and defendant copeland kicked me in my chest two times. Defendant Copeland swoll and brused my right leg and even the top of my ankle was swollen. While that was going on defendant Kendrick bust up in the shift office; the reason defendant kendrict came in is because Defendant latimore called him on the radio. Then defendant Copeland said to defendant Kendrick, "I don't need no help with this bitch". I was still on the floor then I believe defendant Copeland stopped hitting me, because my left elbow was bleeding so bad. There was blood all over the shift office floor. Defendant Copeland told me to get up. I couldn't get up cause my arms was so swollen. So I slid up the wall with my back pressed to the wall and filing cabinet. Then defendant Copeland said to defendant kendrick, "take this bitch to get a body chart, before I kill him". Through the whole thing defendant latimore watched and other times he would run the inmates off the hall way so they wouldn't see the brutal beating defendant Copeland was putting on me. Defendant latimore closed the main door, so that defendant Kendrick could walk me out of the office. As defendant was escorting me through the law library in order for me to get a body chart but before we made it through the law library defendant copeland called us back.

Defendant Copeland said to defendant Kendrick, "take that bitch through the camp, so the rest of the inmates can see what I did to his ass". so me and defendant Kendrick went through the common area for all the inmates to see going to HCU. On our way to the Health Care Unit, defendant kendirck asked me "damn teenager, why did defendant copeland do that to you?". I told defendant kendirck kendirck that defendant copeland caught me in the old package room and I believe defendant copeland thought I was trying to masterbate on Nurse Sharon Richie, that's the pill call nurse name. So when defendant kendirck and myself, got over to HCU, their were two nurses in there by the name of Nurse Parnell and Nurse Adair. The two nurses asked defendant kendirck, "what happened to him?" Defendant kendirck said that "defendant copeland said he was masterbating", so defendant parnell and defendant Adair made jokes of the incident. Defendant Parnell said "I bet you want pull that thing out no more. While defendant Parnell was laughting she was wrapping my left elbow cause that was the major problem. Then defendant parnell kept an asking defendant kendirck, "why do defendant Copeland, keep on beating those people children?" I got mad cause defendant parnell, nor defendant Adair never asked me what was wrong with me or do I hurt anywhere. Defendant Parnell nor defendant Adair never asked me about the pain I was in. I told defendant Parnell that I couldn't move my right arm cause it was severly swollen. So defendant Adair, tried to move my right arm for me but it was hurting so bad TILL i told defen dant Adair to stop because the

pain was too much for me to endure. So defendant Adair told me that I will be alright tomorrow. Defendant Parnell and defendant Adair, never asked or checked anything else on my body. I asked defendant Parnell and defendant Adair is that all I get is a wrapped elbow? What about my right arm and my right leg? Defendant Parnell just kept saying "you will be alright tomorrow, just keep that thing in your pants. Defendant Parnell and defendant Adair just had a good laugh about my situation with defendant copeland. After defendant Parnell was finishing up with my left elbow, defendant Lewis and the pill call nurse Sharon Richie walked in the room where we was. Nurse Richie asked me what happened? I told her that defendant Copeland said I was trying to masterbat on you. Nurse Richie said I didn't see you. After defendant Parnell said let me call defendant Copeland and tell him about himself cause he no better than this. Defendant Parnell called defendant Copeland on the telephone. After defendant Parnell hung up, defendant Kendrick called defendant copeland and asked him what to do with me. Defendant Copeland said to defendant Kendrick on his walkietalkie to take me and lock me up, but first take me to get my property. On our way from HCU, defendant Kendrick, defendant Parnell, defendant Adair and myself met defendant copeland by the first gate. Defendant copeland looked at my cloths and said to defendant Kendrick to take me and lock my ass up. after defendant Copeland told me that he was going to ship my ass cause that's what I needed. To go to West Jefferson, so they can fuck my ass. Then defendant copeland told defendant Kendrick to get all my shit and get me some more cloths to put on.

Defendant Copeland told defendant kendrick, that if he didn't get the cloths that I was wearing with all of the blood on that he couldn't leave. So defendant kendrick walked me to the holding unit 3 and locked me up. After about 15 minutes defendant kendrick came back with my property and some new cloths. Defendant kendrick asked me to give him the bloody cloths that I was wearing and I said no. Defendant kendrick kept on asking; then he said "come on teenager, please give me the cloths, I 'll bring you anything you want". I said no cause I told defendant kendrick that I'm going to show the warden what defendant Copeland did to me. Then defendant kendrick said "you don't want me to call defendant Copeland back over here". I told defendant kendrick to call hiim I don't care, because he already done beat me, what else (defendant copeland) is he going to do"? I said "defendant Copeland beat me for nothing and my arms is hurting", defendant kendrick said "if I give him the cloths that he would take me back to see another nurse to help me". Defendant kendrick said "what ever I want - he would get it for me if I just give him the cloths". So after defendant kendrick begged me for about 30 minutes I finally gave him the cloths. Then defendant kendrick put the bloody cloths in a brown paper bag and a few seconds latter he left and never came back. Inmate Lavon Swian in 2-cell heard and saw the whole thing. Inmate swian said "dam teenager, defendant kendrick wanted them cloths real bad". Inmate swian saw the bloody cloths. I laid in 3-cell swollen with my leg, elbow, arms and face swollen real bad with notreatment at all. I was in 3-cell swollen from sunday the 15th of August till thursday the 19th of August, 2004. I couldn't take a bath for several days due to my arms swollen and hurting. After 3 days in 3-cell Defendant Davis and defendant Nabb moved me to 2-cell with inmate swain. Inmate swain seen the condition I was in. Inmate swain use to hand me my food cause it was so hard for me to climb up and down the bed. Inmate swain will attest to what he seen and heard in segregatiion from some of these defendants. On August 19th, 2004, around or about 12:15a.m., defendant copeland came over to visit me and said "Averett we got to work out something".

Then defendant copeland said we might not go to court on that disciplinary. Inmate swain is a witness to what defendant copeland said. Then defendant copeland said he is going to let me out of segregation, then he said no "it's too late cause its count time. But defendant copeland said first thing in the morning I'm letting you out. I knew something was up, cause defendant copeland never been that nice to me. Every day before this beating took place defendant copeland seen me in the camp near the common area and he would run me off by saying "Averette get your dick jacking ass away from this common area, I told you about being up here when I'm working. Defendant copeland was fixing to leave our cell but inmate swain told defendant copeland to go ahead and let him (Averette) out, he is Ready to do right. Defendant copeland said he'll see. Then defendant copeland asked me do I know vazell? I said are you talking about the tall boy that clean up the yard? Defendant copeland said that bitch don't clean up no yard, he just be shamming so he can fuck Sgt. Lee, she must like his dick cause she haven't wrote his ass up yet. Defendant copeland said Sgt. Lee and an inmate Rozell must got something going on. I believe defendant copeland didn't think that I knew what he had done to inmate Rozell; so I asked defendant copeland where is Rozell/ defendant copeland answered I handled it. I asked him again, what did you do Lt. Copeland? Defendant copeland answered by saying don't worry, I handled it, then he left. So about 1:00p.m., the officer in the cube called me and said Averette, defendant copeland said put your cloths on. You are going to the shift office for disciplinary court. So defendant copeland came to get me. Dr. Bivine, defendant Nobles defendant copeland and myself was walking to the gate office at station facility. Defendant Noble open the gate for us. Defendant copeland got real up-set and said to defendant Nobles, "I don't want you to open no gate for me, I know how to open the gate, just gone where you're going. So defendant Nobles said "you (defendant copeland) told me to bring you these keys! Defendant copeland said "just put them in the shift office I'll get them later. Defendant copeland was talking his problems out on defendant Nobles. Defendant Nobles asked defendant copeland what's the matter? Defendant copeland just kept

saying to defendant noble, just gone, gone, gone..so afterward defendant nobles left and we started walking through the breakroom. Defendant copeland was asking me to cop out on the disciplinary and then he starting begging me to plead guilty. Defendant copeland and myself sat in the law library as he continued to beg me to cop out on the disciplinary. When defendant copeland kept on begging me to plead guilty on the disciplinary. I told defendant copeland I got a year and six month clear record and I'm not going to lose that for something I didn't do. Then I said "I haven't received a christmas box in my name since I've been locked up. Then defendant copeland said if I plead guilty he'll make sure that I get my christams box. Then I said to defendant copeland, that you did not see me masterbating in the old package room. Defendant copeland said out of his own mouth "that he didn't see me masterbate". I said "well why did you lie and say that"? Defendant copeland said he was going through something at the time" He said he didn't mean the beating to go so far. Then defendant copeland just gone an plea guilty, I asked defendant copeland why was he talking backward by saying just gone an plea guilty, because defendant copeland said I want to help you. I said no then defendant copeland went and called my witness Reginold Knight, AIS#182897, to the shift office so we could go to disciplinary court. So after my witness came up, we went in the shift office for the diisciplinary procedure to take place. Inmate Reginold Knight, defendant copeland, defendant Browning and myself was at the disciplinary hearing. Defendant Browning made everybody raise their right hand u nder oath. Defendant Browning asked defendant copeland what was his side and he said he had nothing to say: that was defendant copeland statement at the disciplinary heariing. I told my side then my witness told his side. After that defendant Browning said that my witness was a good witness. Defendant copeland wouldn't tell the truth in the diisciplinary procedure under oath. Defendant copeland just sat back and watched and everybody else at the diisciplinary procedure. I still was found guilty on the disciplinay for something I didn't do.

Respectfully Submitted,


Zavius Averette

RELIEF SOUGHT

Award compensatory damages in the following amount:

(A) \$50,000.00 jointly and severally against defendant copeland, Nobles, Latimore, Thomas, Nabb, Browning, Dopal Campbell, Davis, George Edward and Bivine for failure to take disciplinary action or other action to curb the known pattern of physical abuse of inmates by defendant copeland constituted deliberated indifference, and contributed to and proximately caused the above described violation of Eight Amendment rights and assault and battery.

Award punitive damages in the amount of \$50,000.00 each against defendant copeland, Nobles, Latimore, Thomas, Browning, Kendrick, Davis, Nabb and Noble in using physical force against the plaintiff without need or provocation, or in failing to intervene to prevent the misuse of force, were done maliciously and sadistically and constituted infringement in violation of the ninth amendment of the United States Constitution.

(C) Award punitive damages in the amount of 50,000.00 each against defendant actions in using physical force against the plaintiff without need or provocation constituted the tort of assault and battery under the color of law of the STATE OF ALABAMA.

(D) Award punitive damages in the amount of \$50,000.00 each against defendants parnell and Adair of their failure to provide for the injuries of the swollen arms, chest pain, right leg, ankle swollen and the paining over plaintiff body with no follow-up examination and treatment of his injured arms, chest, right leg, ankle swollen and body pain constitutes the tort of negligence under the law of the STATE OF ALABAMA.

(E) Award punitive damages in the amount of \$50,000.00 each against defendants Donal Campbell, Warden Thomas in their action in refusing to overturn the plaintiff's disciplinary conviction, despite their knowledge of the above described due process violations, constituted deliberate indifference and further denied the plaintiff the due process of law in violation of the fourteenth Amendment to the United States Constitution.

(F) That each defendant be removed from their job indefinitely.

Grant any other such relief that this court see deem should be sought.

Respectfully Submitted,

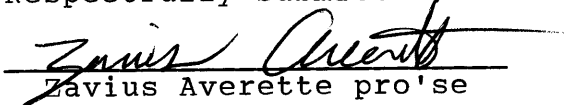


Zavius Averette
AIS#217905 2-79
100 Warrior Lane
Bessemer, AL. 35023

CERTIFICATE OF SERVICE

I, hereby certify that I have served a copy of the foregoing to the defendants attorney via first class U.S. mail, postage prepaid and properly addressed on this 1st day of May, 2006.

Respectfully Submitted,



Zavier Averette pro'se
AIS#217905 2-79C
100 Warrior Lane
Bessemer, AL. 35023

ALABAMA DEPARTMENT OF CORRECTIONS
LEGAL DIVISION
P.O. BOX 301501
301 S. Ripley Street
Montgomery, AL. 36130